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Attorneys for Federal Defendant

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

XIAO D. CHEN,

Plaintiff,

v.

JOHN E. POTTER, POSTMASTER
 GENERAL OF THE UNITED STATES;

Defendants.

Case No. C 10-4920 JF

**STIPULATION AND AGREEMENT OF
 COMPROMISE AND SETTLEMENT
 AND [PROPOSED] ORDER**

IT IS HEREBY STIPULATED by and between the parties, after full and open discussion,
 that this action be settled and compromised on the following terms:

WHEREAS, Plaintiff has filed the following administrative EEO complaints with the United
 States Postal Service: No. 4F-945-0195-07 filed September 21, 2007 and No. 4F-945-0093-09
 filed July 7, 2009.

WHEREAS, Plaintiff filed the above-captioned action under Title VII of the Civil Rights Act
 of 1964, 42 U.S.C. §2000e-16, as amended.

WHEREAS, Plaintiff and Defendant wish to avoid any further litigation and controversy and
 to settle and compromise fully any and all claims and issues that have been raised, or could have

1 been raised, arising out of Plaintiff's employment with Defendant, which have transpired prior to
2 the execution of this Agreement;

3 NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement,
4 and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties
5 agree as follows:

6 1. **Settlement Amount.** In full and final settlement of all claims in connection with the
7 above-captioned action, defendant shall pay Plaintiff a total sum of \$65,000.00 ("Settlement
8 Amount"). This amount will be the full amount paid in consideration of the mutual promises
9 contained in this Agreement and is not in addition to any amounts paid by Defendant to Plaintiff
10 or his Attorney. If Plaintiff or his attorney cash or have cashed any amount paid by Defendant
11 prior to the execution of this Agreement, such payment will be considered as partial compliance
12 with this Agreement. There shall be no withholding from this amount as plaintiff's damages
13 claims are limited to emotional distress and attorney's fees. Plaintiff understands that this
14 payment may be reported to the Internal Revenue Service ("IRS"), and that any questions as to
15 the tax liability, if any, as a result of this payment is a matter solely between Plaintiff and the
16 IRS. The check will be made payable to Plaintiff Xiao D. Chen and his attorney, Michael C.
17 Cohen and will be mailed to Plaintiff in care of his counsel. Plaintiff and his attorney have been
18 informed that payment of the Settlement Amount may take sixty (60) days or more to process.

19 2. **Release.** In consideration of the payment of the Settlement Amount and the other terms
20 set forth in this Stipulation and Agreement, Plaintiff hereby releases and forever discharges
21 Defendant, United States Postal Service, and any and all of its past and present officials, agents,
22 employees, attorneys, insurers, their successors and assigns, from any and all obligations,
23 damages, liabilities, actions, causes of actions, claims and demands of any kind and nature
24 whatsoever, including claims arising under the Age Discrimination in Employment Act, 29
25 U.S.C. § 633a, whether suspected or unsuspected, at law or in equity, known or unknown, or
26 omitted prior to the date he executes this Agreement, which arise from or relate to his
27 employment with United States Postal Service.

3. **Attorneys' Fees.** The parties agree that the Settlement Amount is in full satisfaction of all claims for attorneys' fees and costs arising from work performed by Plaintiff's counsel at all stages of litigation, including, but not limited to, the processing of Plaintiff's administrative and district court complaints in connection with the above-captioned action, and any other EEO administrative proceedings which are currently pending.

4. **Dismissal.** In consideration of the payment of the Settlement Amount and the other terms of this Stipulation and Agreement, Plaintiff agrees that he will within seven days of this agreement, execute a Stipulation of Dismissal, which stipulation shall dismiss, with prejudice, all claims asserted in this Action or any claims that could have been asserted in this Action. The fully executed Stipulation of Dismissal will be held by counsel for Defendant and will be filed with the Court upon receipt by Plaintiff's counsel of the Settlement Amount].

5. **Waiver of California Civil Code § 1542.** The provisions of California Civil Code Section 1542 are set forth below:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Plaintiff has been apprised of the statutory language of Civil Code Section 1542 by his attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any and all rights he may have pursuant to the provision of that statute and any similar provision of federal law. Plaintiff understands that, if the facts concerning Plaintiff's claims and the liability of the government for damages pertaining thereto are found hereinafter to be other than or different from the facts now believed by them to be true, this Agreement shall be and remain effective notwithstanding such material difference.

6. **Agreement as a Complete Defense.** This Agreement may be pleaded as a full and complete defense to any subsequent action or other proceeding involving any person or party which arises out of the claims released and discharged by the Agreement.

1 7. **No Admission of Liability.** This is a compromise settlement of a disputed claim and
2 demand, which settlement does not constitute an admission of liability or fault on the part of the
3 Defendant, United States Postal Service, or any of its past and present officials, agents,
4 employees, attorneys, or insurers on account of the events described in Plaintiff's complaints in
5 these actions.

6 8. **Tax Liability.** If any withholding or income tax liability is imposed upon Plaintiff or
7 Plaintiff's counsel based on payment of the settlement sum received herein, Plaintiff or
8 Plaintiff's counsel shall be solely responsible for paying any such determined liability from any
9 government agency thereof.

10 9. **Enforcement Sole Remedy.** The parties agree that should any dispute arise with respect
11 to the implementation of the terms of this Agreement, Plaintiff shall not seek to rescind the
12 Agreement and pursue his original causes of action. Plaintiff's sole remedy in such a dispute is
13 an action to enforce the Agreement in the United States District Court for the Northern District of
14 California.

15 10. **Construction.** Each party hereby stipulates that it has been represented by and has relied
16 upon independent counsel in the negotiations for the preparation of this Agreement, that it has
17 had the contents of the Agreement fully explained to it by such counsel, and is fully aware of and
18 understands all of the terms of the Agreement and the legal consequences thereof. For purposes
19 of construction, this Agreement shall be deemed to have been drafted by all Parties to this
20 Agreement and shall not, therefore, be construed against any Party for that reason in any
21 subsequent dispute.

22 11. **Severability.** If any provision of this Agreement shall be invalid, illegal, or
23 unenforceable, the validity, legality, and enforceability of the remaining provision shall not in
24 any way be affected or impaired thereby.

25 12. **Integration.** This instrument shall constitute the entire Agreement between the parties,
26 and it is expressly understood and agreed that the Agreement has been freely and voluntarily
27 entered into by the parties hereto with the advice of counsel, who have explained the legal effect
28 of this Agreement. The parties further acknowledge that no warranties or representations have

1 been made on any subject other than as set forth in this Agreement. This Agreement may not be
 2 altered, modified or otherwise changed in any respect except by writing, duly executed by all of
 3 the parties or their authorized representatives.

4 13. **Authority.** The signatories to this Agreement have actual authority to bind the parties.

5 14. **Expungement of Personnel Records.** In addition to the terms described in paragraph 1
 6 above, Defendant agrees to the following: Defendant shall expunge from the Plaintiff's
 7 personnel records, if it has not yet done so, the July 13, 2007, notice of seven-day no time off
 8 suspension for being absent without official leave and the August 24, 2007, notice of fourteen-
 9 day no time off suspension for "unsatisfactory work performance/delay of first class mail."
 10 Defendant shall also expunge from the Plaintiff's personnel records the July 28, 2009, notice of
 11 seven-day no time off suspension for unsafe act/failure to follow instructions.

12 15. **Training of Plaintiff's Former Supervisors.** In addition to the terms described in
 13 paragraph 1 above, Defendant agrees to train Plaintiff's former supervisors, Mark Cole and
 14 Rennee Concepcion, if they are still employed by Defendant, to avoid unlawful harassment based
 15 on national origin and/or retaliation.

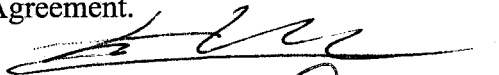
16 16. **Knowing and Voluntary Waiver of Remedies Under Age Discrimination in**
 17 **Employment Act.** Plaintiff acknowledges that he has up to twenty-one (21) calendar days from
 18 the date he receives this Agreement to review and consider this Agreement, discuss it with an
 19 attorney of his choice, and decide to sign it or not sign it, although he may accept or return it to
 20 Defendant's counsel at any time within those twenty-one (21) days. Plaintiff is advised to
 21 consult his attorney about the Agreement.

22 17. Once Plaintiff signs and dates this Agreement, he will have seven (7) days in which to
 23 revoke his acceptance. To revoke, Plaintiff must send a written statement of revocation, which
 24 should be mailed and faxed to:

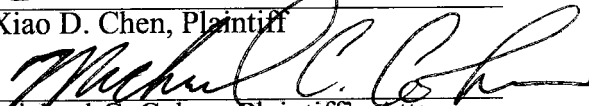
25 JAMES A. SCHARF
 26 Assistant United States Attorney
 27 150 Almaden Blvd., Suite 900
 28 San Jose, California 95113
 Facsimile: (408) 535-5081

1 Plaintiff understands that if he revokes, this Agreement shall have no effect. If Plaintiff does not
2 revoke, this Agreement will become effective on the eighth (8th) day ("the Effective Date") after
3 the date Plaintiff signs and dates this Agreement.

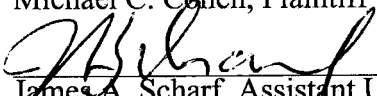
4 DATED: ^{Aug 2}~~July~~, 2011


Xiao D. Chen, Plaintiff

5 DATED: ^{Aug 8}~~July~~, 2011



Michael C. Cohen, Plaintiff's Attorney

6 DATED: ⁸⁻¹⁰~~July~~, 2011


James A. Scharf, Assistant United States Attorney
Attorney for Defendant

9 PURSUANT TO STIPULATION, IT IS SO ORDERED.

10 DATED: 8/12/11


HON. JEREMY FOGEL
United States District Judge